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United States Patent and Trademark Office
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Abram Ellison
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Detroit MI 48235

COPY MAILED

JUL 06 2007

OFFICE OF PETITIONS

In re Application of
Abram Ellison
Application No. 10/772,346
Filed: 02-06-2004
Title: Perpetual motion energy

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 2, 2007, to revive the above-identified application.

The petition is **dismissed**.

The Office finance records indicate that petitioner did not submit a petition fee with the present petition. For this reason, the petition under 37 CFR 1.137(a) will not be treated on its merits. The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unavoidable delay. In this instance, the fee required by law is \$250.00.

Accordingly, the Office lacks the discretion to, and will not, address the merits of any petition seeking revival of an abandoned application in the absence of the filing of a new petition under 37 CFR 1.137(a) and paying the \$250.00 petition fee required by statute.

As petitioner is acting *pro se*, the Office reminds petitioner that a showing of "unavoidable" delay based upon medical incapacitation must establish that petitioner's incapacitation was of such a nature and degree as to render him unable to conduct business (e.g., correspond with the Office) during the period when the reply was due. Petitioner must provide a statement from petitioner's treating physicians to support the showing of medical incapacitation. Specifically, the statement must identify the nature and degree of petitioner's incapacitation during the period from January 9, 2006, until the filing a grantable petition. Although petitioner stated that he submitted medical evidence with the petition, the Office did not receive these documents.

The Office cautions petitioner to remove or mark through any personal information in any document submitted to the USPTO that could contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card

authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioner should consider deleting such personal information from the documents before submitting them to the USPTO. However, checks and credit card authorization forms (PTO-2038) submitted for payment purposes are not retained in the application file, and therefore, are not publicly available.

Therefore, petitioner must submit: (1) a new petition under 37 CFR 1.137(a); (2) a reply in the form of a Notice of Appeal (and appeal fee), RCE (and fee), or the filing of a continuing application under 37 CFR 1.53(b); (3) documentary evidence to support a showing of unavoidable delay; and (4) pay the petition fee required by statute (\$250.00).

Petitioner may wish to file a petition under 37 CFR 1.137(b) due to unintentional delay rather than a petition under 37 CFR 1.137(a). A petition under 37 CFR 1.137(b) is significantly less burdensome to prepare and prosecute than a petition under 37 CFR 1.137(a). The Office is almost always satisfied as to whether "the entire delay...was unintentional" on the basis of statement(s) by the applicant. Therefore, if petitioner files a petition under 37 CFR 1.137(b), petitioner would not be required to submit a statement from his treating physician. Instead, petitioner would need to submit: (1) a petition under 37 CFR 1.137(b); (2) a reply in the form of a Notice of Appeal (and appeal fee), RCE (and fee), or the filing of a continuing application under 37 CFR 1.53(b); and (3) pay the petition fee required by statute (\$750.00). The appropriate form accompanies this communication for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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Office of Petitions

Enclosures